

The Corporation of the City of Toronto - - - *Appellant*

*v.*

The Attorney General of Canada - - - *Respondent*

FROM

THE COURT OF APPEAL FOR ONTARIO

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 9TH OCTOBER, 1945

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*Present at the Hearing:*

THE LORD CHANCELLOR (VISCOUNT SIMON)

LORD RUSSELL OF KILLOWEN

LORD MACMILLAN

LORD PORTER

LORD SIMONDS

[*Delivered by* LORD MACMILLAN]

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The Attorney-General of Canada on behalf of the Minister of Finance of the Dominion and the Corporation of the City of Toronto are competitors for a sum of 155,000 dollars in the hands of the Registrar of the Supreme Court of Ontario. This sum consists of fines imposed on a number of companies convicted of contraventions of Section 498 of the Criminal Code which is directed against conspiracies and combinations restrictive of industry and commerce. The prosecutions which resulted in the imposition of these fines were instituted and conducted by the Dominion Government. The trial, which was on indictment, took place at the Assizes of the Supreme Court of Ontario at Toronto before Hope, J., sitting without a jury.

On the application of the Registrar with whom the fines had been deposited Henderson, J., on 7th April, 1942, made an order directing that an issue be tried, with the Attorney-General of Canada as plaintiff and the Corporation of the City of Toronto as defendant, for the determination of the question whether the Minister of Finance of the Dominion or the Corporation was entitled to the deposited fines. Pleadings were ordered and lodged, a minute of admissions of fact was agreed, and the case came on before Hope, J., who decided the issue in favour of the plaintiff. The Court of Appeal for Ontario by a majority of four to one affirmed this decision, and the matter is now before their Lordships for final determination.

The question turns upon the interpretation to be placed on Section 1036 of the Criminal Code of which the first sub-section is as follows:—

“Whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any law or of the proceeds of an estreated recognizance, the same shall be paid over by the magistrate or officer receiving the same to the treasurer of the province in which the same is imposed or recovered, except that

(a) all fines, penalties and forfeitures imposed in respect of the breach of any of the revenue laws of Canada, or imposed upon any officer or employee of the Government of Canada in respect of any breach of duty or malfeasance in his office or employment, and

the proceeds of all recognizances estreated in connection with proceedings for the prosecution of persons charged with such breaches or malfeasance; and

(b) all fines, penalties and forfeitures imposed for whatever cause in any proceeding instituted at the instance of the Government of Canada or of any department thereof in which that Government bears the cost of prosecution, and the proceeds of all recognizances estreated in connection with such proceedings, shall belong to His Majesty for the public uses of Canada, and shall be paid by the magistrate or officer receiving the same to the Minister of Finance and form part of the Consolidated Revenue Fund in Canada;

Provided, however, that with respect to the Province of Ontario the fines, penalties and forfeitures and proceeds of estreated recognizances first mentioned in this section shall be paid over to the municipal or local authority where the municipal or local authority wholly or in part bears the expense of administering the law under which the same was imposed or recovered."

The main enactment is clear and unambiguous. So far as affecting fines—and the other categories may for the present purpose be disregarded—it directs that in the absence of any law of Canada to the contrary all fines imposed for the violation of any law shall be paid over to the treasurer of the province in which the fines are imposed or recovered, with the exception of fines imposed in certain classes of proceedings which because of the nature of those proceedings are appropriated to His Majesty for the public uses of the Dominion and are to be paid over to the Dominion Minister of Finance. The proviso qualifies this general enactment in the case of the Province of Ontario and directs that "the fines first mentioned in this section" are to be paid over to the municipal or local authority when that authority bears the whole or part of the expense of administering the law under which the fines were imposed or recovered. It is admitted that the Corporation of Toronto defrays the cost of administering justice in the area within which the city is situated.

The contention of the Corporation is that "the fines first mentioned" in the section are fines imposed for the violation of any law "whether or not the fines fall within any of the descriptions contained in sub-classes (a) or (b) of the said section." This was the view of Henderson, J. A., who regarded the classes of fines excepted in heads (a) and (b) as fines second and third mentioned in the section. The fines excepted in heads (a) and (b) were thus in his opinion not excepted from the fines specially disposed of by the proviso in the case of the Province of Ontario.

Their Lordships appreciate the verbal point of this interpretation but they do not agree with it. In their opinion "the fines first mentioned" in the section are all fines other than those excepted in heads (a) and (b). The expression "fines . . . first mentioned in this section" does not necessarily imply that there is to be found in the section a series of fines, first mentioned, second mentioned, third mentioned, and so on. Their Lordships read the expression as referring to the fines dealt with in the beginning of the section, that is, in the main enactment. A slight change in the structure of the section, which may be legitimately made, puts the matter beyond doubt. If it had run as follows:—"any fine, except those enumerated in heads (a) and (b), imposed for the violation of any law, shall be paid over to the treasurer of the province in which the same is imposed," it could hardly have been contended that the proviso in disposing otherwise of the fines first mentioned in the section was intended to apply to all fines without exception imposed for the violation of any law. Incidentally it may be pointed out that it is inaccurate to designate the excepted heads (a) and (b) as "sub-clauses"; they are an inherent part of the main enacting clause.

But apart from these considerations the substance of the matter plainly justifies the interpretation which commended itself to the majority of the learned judges of Ontario. The purpose of the enactment is to give to the provincial treasurers the fines imposed in their provinces other than

those which are expressly appropriated to the Dominion Minister of Finance. But for the proviso fines imposed in the Province of Ontario with the stated exceptions would have been payable to the treasurer of the Province—not all fines, be it observed, but all fines other than those expressly excepted. The proviso qualifies the generality of the main enactment by providing that in the special case of the Province of Ontario those fines, but only those fines, which would otherwise have gone to the provincial treasurer shall go to the municipal or local authority which bears the expense of administering justice. It would be foreign to the proper function of a proviso to read this proviso as providing that in Ontario not only those fines which the main enactment gives to provincial treasurers should go to the municipal or local authority but also those fines which the main enactment has expressly said shall not be given to provincial treasurers. The reason for the exception of the fines specified in heads (a) and (b) is as cogent in the case of the fines given in Ontario to the municipal or local authority as it is in the case of the fines which elsewhere are to go to the provincial treasurers, for the fines specified in heads (a) and (b) have all the characteristic of being imposed in matters which are the special concern of the Dominion. No reason was suggested why the Dominion should in Ontario be deprived of these fines. In their Lordships' opinion the proviso has no such effect.

A subsidiary argument was submitted on behalf of the Corporation based on an allegation that the Government of the Dominion had not in fact borne all the cost of the prosecutions in question with the consequence that the deposited fines did not fall within exception (b) on which the respondent relied. There is no substance in this contention. The Attorney-General for Ontario at the inception of the prosecutions expressly disavowed any intention of taking action in the matter in view *inter alia* of the facts that the alleged combine involved other provinces besides that of Ontario and that the expense would be substantial. On 19th July, 1939, he wrote to the Dominion Acting Minister of Justice that "the prosecutions and the expense thereof will be solely the responsibility of the Dominion." That responsibility was accepted on behalf of the Dominion authorities who have paid all expenses for which accounts have been rendered by the Corporation and who have at all times been prepared to defray any expenses which the Corporation could show that it had incurred.

Their Lordships thus find themselves in agreement with the decision of the Courts of Ontario and will humbly advise His Majesty that the appeal be dismissed. The Corporation will pay to the respondent his costs of the present appeal.

In the Privy Council

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THE CORPORATION OF THE CITY OF  
TORONTO

v.

THE ATTORNEY GENERAL OF CANADA

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DELIVERED BY LORD MACMILLAN

Printed by His Majesty's STATIONERY OFFICE PRESS,  
DRURY LANE, W. C. 2.

1943